

Proposal

Reclassification of Certain Vermont Surface Waters in the Green Mountain National Forest to Class A(1) Pursuant to the Vermont Water Quality Standards.

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1. Introduction

In the following document, the Watershed Management Division (WSMD or Division) presents a proposal to reclassify certain Vermont surface waters in United States Forest Service (USFS) lands, in the Green Mountain National Forest (GMNF). This briefing addresses: the purpose of the proposal, including Vermont's regulatory authority to conduct the reclassification effort; goals and objectives of the effort; and documentation as to what reclassification means in terms of allowable activities for surface waters that are reclassified. The process of reclassification is described in terms of timelines and proposed roles and responsibilities. Lastly, an atlas of surface waters under consideration is presented. This proposal results from a series of meetings WSMD convened with GMNF staff and leadership during the period 2015-2016 regarding surface water management and protection activities of mutual interest. This document has been prepared to clearly articulate to stakeholders the purpose and ramifications of the proposed reclassification effort.

2. Background

In Vermont, surface waters are classified by the governing water quality law that is implemented through rules of the State and guided by VTANR policy pursuant to the Water Pollution Control Act of 1972 (Clean Water Act, or Act). Pursuant to the Act, States are required to establish and implement water pollution control programs (see generally [40 CFR 131](#)). In particular, delegated states like Vermont must classify surface waters, designate specific uses to each classification that those surface waters are managed to support, and adopt specific water quality criteria designed to protect the designated uses at the established classification level. Vermont's implementation of the Clean Water Act's framework of classification, use, and criteria is expressed in Statute in Title 10 V.S.A. [Chapter 47](#) (see 10 V.S.A. §§ 1205-1253), most recently amended by Act 79 or 2016. Chapter 29a of Vermont's Environmental Protection Rules, also known as the Vermont [Water Quality Standards](#) (WQS) provides the designated uses and specific criteria for each classification. In determining whether water bodies meet water quality

criteria and support designated uses, VTANR follows water quality policies and [guidance documents](#) which establish baseline expectations for surface waters.

By statute (10 V.S.A. § 1253), all surface waters above 2,500 feet of elevation in Vermont are Class A(1). Specific waters may have individual uses designated to Class A(1) through the process or amending the Vermont Water Quality Standards. The Watershed Management Division is presently in the process of updating the Water Quality Standards to reflect the legislative intent of Act 79. There have been no amendments to Vermont's surface water classifications since ~1990. However, below the 2,500 ft. elevation threshold, there are numerous surface waters which have been documented to attain the biological criteria established for Class A(1), or exhibit characteristics consistent with Class A(1).

The Division supports a robust [Tactical Planning Process](#), one specific objective of which is to identify candidate surface waters for reclassification. Such candidate waters are typically identified based on available monitoring and assessment data which documents attainment of the Class A(1) conditions for specific designated uses, though surface water can also be recommended based on reasonable attainability of the A(1) condition. In any instance, in proposing to reclassify surface waters to A(1), the Secretary of ANR must make the determination that the proposal is in the public interest. ANR accomplished the initial identification steps for this determination as a result of the tactical planning process and the genesis of this proposal to GMNF may be found within the recommendations of [several Tactical Basin Plans](#) that have been published by the Division since 2009.

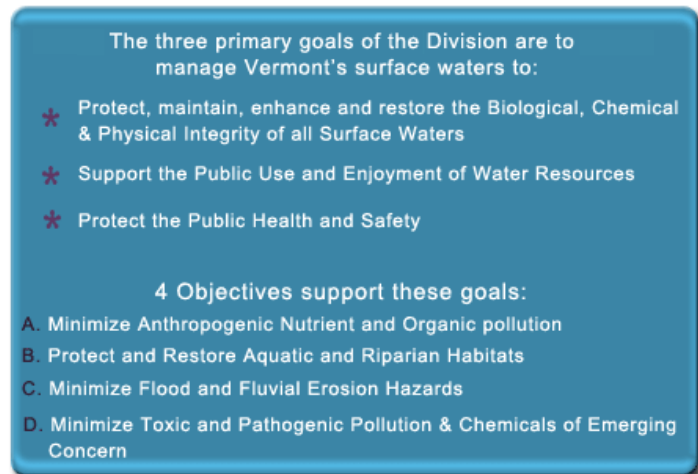
One reason why reclassifications have not been undertaken recently is due to landowner concerns that such reclassifications will unnecessarily restrict land use activities in watersheds of Class A(1) waters. However, the actual statutory land use restrictions triggered by reclassification are relatively limited (discussed in Section 3 below) and this proposal clarifies the precise scope of these restrictions.

3. Goals and Objectives of this Proposal

The goals and objectives of WSMD are to manage Vermont's surface waters as described in the box adjacent. The WSMD's [strategic plan](#) specifically provides that one method for pursuing surface water protection is by reclassification. The proposal described herein

furtheres this plan by recognizing and codifying the protection of aquatic biota, aquatic habitat, and other designated uses. WSMD recognizes that USFS land stewardship already

confers significant protections to surface waters, most all of which are consistent with the management of surface waters to maintain their natural condition. For example, the 2013 USFS National Best Management Practices for Water Quality (BMPs), which present provisions for multiple forest management activities, impart an enterprise-wide national emphasis on water quality and groundwater protection. As such, the Division sees the opportunity to work with USFS in this endeavor as an ideal opportunity to formally recognize and maintain the high quality of these waters without impacting GMNF management objectives for the lands in these watersheds.



The three primary goals of the Division are to manage Vermont's surface waters to:

- * Protect, maintain, enhance and restore the Biological, Chemical & Physical Integrity of all Surface Waters
- * Support the Public Use and Enjoyment of Water Resources
- * Protect the Public Health and Safety

4 Objectives support these goals:

- A. Minimize Anthropogenic Nutrient and Organic pollution
- B. Protect and Restore Aquatic and Riparian Habitats
- C. Minimize Flood and Fluvial Erosion Hazards
- D. Minimize Toxic and Pathogenic Pollution & Chemicals of Emerging Concern

Management Objectives for Class A(1) Waters

The WQS articulate the following specific management objectives for Class A(1) waters:

Section 3-02 Class A(1) Ecological Waters

A. Management Objectives

Managed to achieve and maintain waters in a natural condition, compatible with the following designated uses:

1. **Aquatic Biota, Wildlife, and Aquatic Habitat** - consistent with waters in their natural condition. Biological criteria indicate no more than a minimal change from the reference condition.
2. **Aesthetics** - water character, flows, water level, bed and channel characteristics, and flowing and falling waters in their natural condition.
3. **Swimming and Other Primary Contact Recreation** - highest quality in waters, in their natural condition with negligible risk of illness or injury from conditions that are a result of human activities.
4. **Boating, Fishing, and Other Recreational Uses** - highest quality as compatible with waters in their natural condition.

Scope of Proposal

The Division is proposing to reclassify designated uses of certain surface waters to Class A(1), in recognition of the clean water benefits and public interest established by the tactical basin plans. This amendment will propose to reclassify certain streams or lakes or ponds within GMNF holdings from their current Class B(2) classification for all designated uses, to Class A(1) for identified designated uses, in recognition of their high quality, or the current management approach for surrounding lands. Surface waters that are classified as A(1) for specific designated uses are subject to the relevant water quality criteria presented by the WQS pertaining to those uses, with the intent of preserving their natural condition.

As a result of conversations with USFS, WSMD proposes to recognize the very high existing quality of certain surface waters, by reclassifying the stated designated uses to Class A(1). Maps of these surface waters are presented in Appendix A.

- 1) All streams, lakes, and ponds below 2,500 ft. which occur within congressionally designated Wilderness and their tributaries where they are also within GMNF boundaries. These surface waters are proposed to be designated Class A1 for all designated uses.

- 2) All streams, lakes, and ponds below 2,500 ft. which occur within GMNF holdings of the White Rocks National Recreation Area and their tributaries where they are also within GMNF boundaries. These surface waters are proposed to be designated Class A1 for all designated uses.
- 3) All streams, lakes, and ponds below 2,500 ft. which occur within GMNF holdings of the Mooselamoo Recreation Area and their tributaries where they are also within GMNF boundaries, except for the Sucker Brook watershed draining all components of the Silver Lake Hydroelectric Project. These surface waters are proposed to be designated Class A1 for all designated uses.
- 4) Eight individually named streams and lakes or ponds and their tributaries within GMNF lands which have been identified through the Tactical Planning Process to attain Class A(1) criteria, or to have characteristics of A(1). These surface waters are proposed to be designated Class A(1) for aquatic biota, aquatic habitat, and in limited instances, fishing uses. These include:
 - a. White River Watershed
 - i. Smith Brook and tributaries (Rochester/Goshen)
 - ii. Bingo Brook and tributaries downstream to the GMNF boundary above Kings Pond (Hancock/Rochester)
 - iii. Beaver Meadows Ponds beginning at outlet of downstream most pond, upstream including tributaries.
 - b. Deerfield Watershed
 - i. Deerfield River and tributaries downstream to GMNF boundary north of Searsburg-Somerset town line, including Castle and Redfield Brook watersheds and Rake Branch Watershed below the confluence with Redfield Brook
 - ii. Stamford Pond and tributaries

c. Otter Creek Watershed

- i. Dutton Brook and tributaries downstream to GMNF boundary west of Hancock-Goshen town line

d. West/Williams/Saxton's River watershed

- i. Mount Tabor Brook and tributaries downstream to confluence with Utley Brook
- ii. Moses Pond

4. Regulatory Implications of Class A(1) Relative to Class B

The WQS provide that VTANR must manage Class A(1) surface waters to achieve and maintain waters in a natural condition. However, this does not mean that there can be no land management in the watersheds, lakeshores, or stream corridors of Class A(1) surface waters. Rather, activities must be carried out in such a way as to maintain the natural condition of streams, compatible with the designated uses set forth in the WQS. The following list of regulatory implications is inclusive of all surface waters in Vermont, and is presented for informational purposes, for readers of this proposal. The State of Vermont is delegated by the United States Environmental Protection Agency to implement all federal Clean Water Act permitting programs in Vermont. The State also maintains State permitting programs that do not also implement the federal Clean Water Act. In specific regards to this proposal, only the federally-delegated permitting programs hold jurisdiction over federal lands.

Harvesting Operations

The Vermont Accepted Management Practices for Logging Jobs in Vermont present a suite of practices that, when adhered to, provide the operator or landowner with a presumption of compliance with WQS, regardless of class (see §2-03.B of the WQS and 10 VSA §1259f). Logging jobs occur throughout Vermont in Class A(1) watersheds on a regular basis with A(1) conditions maintained. The 2013 National BMPs applicable to USFS lands provide a consistent national venue for the Forest Service to track and monitor the implementation and effectiveness

of AMP's, BMP's, Forest Plan standards and guidelines, contract specifications and other site-specific practices.

The WQS provide that the requirements of the WQS for any activity causing a nonpoint source discharge shall be presumed to be satisfied when the activity is conducted in accordance with the AMPs unless a water quality analysis conducted according to WQS Section 2-01(g) demonstrates that there is a violation of the WQS. It follows that as long as all harvesting carried out on GMNF lands is compliant with both the AMPs and the National BMPs, the activity is presumed compliant with the WQS. In addition, the Division has worked over time with GMNF to empirically document the protectiveness of their forest management practices (see specific reports within individual planning basin [webpages](#)).

Stream Alterations

Chapter 27 of the Environmental Protection Rules addresses stream alterations. The Stream Alteration Rule (<http://dec.vermont.gov/watershed/rivers/river-management#rules>) and general permit establish criteria and conditions for the alteration of-stream channels to accommodate crossings or other stream channel structures, modifications, or stabilizations. The Stream Alteration Rule does not draw distinction between the protections afforded to Class B or Class A(1) streams. Instead, it requires that all structures be designed to promote the equilibrium condition of streams. This is not a federally-delegated program.

Discharge Permits

There are three types of discharge permits administered by the State of Vermont, each with specific requirements with respect to Class A(1) waters.

Stormwater Permits issued under State or delegated Federal NPDES authority.

Stormwater discharges can be authorized in Class A(1) surface waters subject to provisions of the Vermont State Stormwater Manual, and these discharges may be regulated under "construction" or "operational" permits. As the State has no jurisdiction over Federal facilities, the discussion below pertains only to State stormwater permits.

Construction General Permit 3-9020 authorizes permittees to discharge stormwater runoff from construction activities provided the activities meet certain conditions. The permitting requirements for projects authorized under this general permit depend upon the risk of stormwater discharge from the construction site. There are two risk categories authorized by the general permit: Low Risk and Moderate Risk. Projects that pose a higher risk are ineligible to use the general permit, and must instead obtain coverage under an individual permit. Projects that are proposed in Class A(1) watersheds are subject to the same risk evaluation as projects in any other surface water. If a project as proposed is not in the low-risk category, then the location of the project in a Class A(1) watershed becomes one of several risk factors that are examined in the determination of project risk and necessary coverage under permit 3-9020. See <http://dec.vermont.gov/watershed/stormwater/permit-information-applications-fees/stormwater-construction-discharge-permits>.

Coverage under General Permit 3-9015 is required for discharges of regulated stormwater runoff from the construction, expansion, and redevelopment of impervious surfaces, regardless of classification. The requirement to obtain a stormwater discharge permit for discharges from regulated impervious surface is contained in Chapter 18 of the Environmental Protection Rules. Detailed descriptions of stormwater permitting for 3-9015 are located at <http://dec.vermont.gov/watershed/stormwater/permit-information-applications-fees#OperationalPermits>). In general, coverage is required when:

- A discharge from new development equal to or greater than one acre;
- A discharge from the expansion of an existing impervious surface, such that the total resulting impervious surface is equal to or greater than one acre, except that a permit is not required for an expansion that meets the exemption in subsection 18-304(a)(4);
- A discharge from the redevelopment of an existing impervious surface if the redeveloped portion of the existing impervious surface is equal to or greater than one acre;

- A discharge from a combination of expansion and redevelopment of an existing impervious surface, such that the total resulting impervious surface is equal to or greater than one acre, except that a permit is not required if the exemptions in subsections 18-304(a)(4) and (5) are met;
- A discharge from any size of impervious surface if the Secretary determines that treatment is necessary to reduce the adverse impacts of the discharge due to the size of the impervious surface, drainage pattern, hydraulic connectivity, installation or modification of drainage or conveyance structures, location of the discharge, existing stormwater treatment, or other factors identified by the Secretary; and
- A discharge from an existing impervious surface of equal to or greater than one acre if the Secretary has previously issued an individual stormwater discharge permit or individual temporary pollution permit for the discharge or has previously granted coverage for the discharge under a stormwater discharge general permit.

Direct discharge permits issued under State or delegated Federal NPDES authority.

Vermont's Water Pollution Control Act and the WQS establish a prohibition against authorization of direct discharges of treated sewage to Class A(1) watersheds. 10 V.S.A. §1259. As a result, neither a State nor a Federal NPDES permit could be issued for a direct discharge to surface waters classified as A(1). See the [Vermont Water Quality Standards](#), at §1-04.A.4.

Wastewater and Potable Water Supply discharge permits issued under State authority.

Pursuant to 10 V.S.A. §1259, the maximum size for an indirect discharge system (e.g., in-ground septic system) is 1,000 gallons per day. The design flow of an existing soil-based system that discharges to Class A waters may not be increased if the total design flow will exceed 1,000 gallons per day. In addition, in order for a permit to be issued, there must be no more than one soil-based disposal system per lot and no more than one lot per application. With respect to USFS operations, this regulation may bear relevance to the development of

campgrounds or other recreational facilities that may propose to rely on an on-site waste system to address sewage needs. In general, the design specifications presented in the Wastewater and Potable Water Supply Rules limit a seasonal campground relying on an in-ground system to 16 sites, presuming no mobile home hookups were envisioned. However, it is important to note that the analysis for determining the maximum allowable discharge for a given site is fact-specific. In addition, the use of completely contained waste treatment systems such as composting toilets or other means for managing sewage may eliminate the need for coverage under the Wastewater and Potable Water Supply Rules. See:

<http://dec.vermont.gov/sites/dec/files/dwgwp/wastewater/pdf/finalwspwsrules.effective2007.09.29.pdf>.

Lake Shoreland and Encroachment Permits

The Vermont Legislature passed the [Shoreland Protection Act \(10 V.S.A. Chapter 49A\)](#), effective July 1, 2014, that regulates activities within 250 feet of the mean water level of lakes greater than 10 acres in size. The intent of the Shoreland Protection Act is to allow reasonable development shorelands of lakes and ponds while protecting aquatic habitat, water quality, and maintaining the natural stability of shorelines. Standards for the creation of impervious surfaces (such as buildings and driveways) and cleared areas within the shoreland area are intended to preserve functioning lake ecosystems, protect water quality, bank stability, conserve aquatic and wildlife habitat, and further the economic benefits of lakes and their shorelands.

Lake Encroachment Permits are issued under 29 V.S.A. Chapter 11 (Management of Lakes and Ponds), which regulates encroachment in public waters. The goals of this [program](#) are to minimize the encroachment on public waters as well as ensure that projects do not adversely affect the public good and are consistent with the Public Trust Doctrine.

All lakes and ponds are regulated similarly under these two permit programs. There are no specific provisions applicable to Class A(1) waters.

Fisheries Management

For surface waters designated as Class A(1) for fisheries, the WQS emphasize the need to manage for streams in their natural condition. Fisheries improvement projects such as chop and drop or habitat restoration fall within the guise of restoration towards a natural condition, and as such would be consistent with the WQS management objectives. Stocking activities, to the extent that species introduced are consistent with Vermont's typical fishery for streams in their natural condition, would likewise be unaffected by A(1) designation. The proposed WQS do contain a proposed criterion prohibiting increases in temperature due to permitted discharges. This criterion would apply where the fishing use is designated as Class A(1).

5. Process for Reclassification

Amendment of Chapter 4 of the WQS is a state rulemaking exercise, requiring adherence to the Vermont's Administrative Procedures Act (VAPA). In Vermont, rulemaking has four required phases. These, along with a fifth optional phase are described below. The Division's proposed role, and the roles which may be requested of GMNF staff, are also described:

Pre-rulemaking outreach to stakeholders

While not required under the VAPA, pre-rulemaking stakeholder outreach is a critical component of a successful rule amendment process. Here, public meetings can be convened to explain the proposed rule amendment, in this case proposed reclassification. Materials can be provided that explain the proposal and the ramifications for affected parties. The Division proposes to host two or more pre-rulemaking outreach meetings in the regions of the proposed reclassification, and has already met with The Division's Water Quality Advisory Committee, whose members represent stakeholders from multiple sectors and perspectives. Staff members of WSMD, particularly the basin planners of the affected watersheds and other staff from WSMD's Monitoring, Assessment and Planning Program would plan and support the proposed meetings. Staff members of GMNF are welcome and their input would provide valuable perspective to participants in the public meetings.

In meetings leading to the development of this proposal, Division and GMNF staff members have developed a stakeholder map that identifies organizations that could be notified of pre-rulemaking outreach meetings. These include, but may not be limited to:

Associated Industries of Vermont
Center for Biological Diversity
Conservation Law Foundation
Green Mountain Club
Regional Planning Commissions
Sierra Club
Trout Unlimited
Vermont All-Terrain Vehicles Sportsman's
Association, Inc.
Vermont Association of Snow Travelers
Vermont Natural Resources Council
Vermont Trails & Greenways Council
Vermonters for a Clean Environment
Vermont Ski Areas Association
Vermont Traditions Coalition
Wilderness Society

Initial Rule Filing

In the initial filing, the applicable state agency files a proposal with the Secretary of State. The draft amended rule and supporting documentation are evaluated in this phase by Vermont's Interagency Committee on Administrative Rules (ICAR). The purpose of this phase is to ensure that the proposal does not conflict with rules and mandates of other State Agencies. Upon receiving approval from ICAR, the proposal moves to the next stage. The initial filing takes up to 45 days to complete.

Proposed Rule Filing

In this phase, the proposed rule is published by the Secretary of State for formal public comment. The applicable state agency schedules hearings to describe the rule and receive public comment, which are similar to the pre-rulemaking outreach. The Division will arrange and staff these meetings, similarly to those

conducted during pre-rulemaking. In these hearings, participation by GMNF staff would be useful, particularly if stakeholders who are well known to GMNF attend. Following the close of the public comment period, WSMD would bear responsibility for preparing a comprehensive responsiveness summary. Subject to the comments received, WSMD may request input from GMNF staff members in preparing responses. The public comment period can take 60 or more days, depending on the nature and scope of comments received.

Final Rule Filing

In this phase, the final rule, including any changes resulting from public comment, are presented to the Vermont Legislative Committee on Administrative Rules (LCAR). LCAR consists of elected legislators, supported by legislative counsel. The role of LCAR is to assess whether the amended rule comports with statutory legislative intent. It is not uncommon for stakeholders who may not have received favorable response to their concerns in the public comment phase to raise these concerns to LCAR through their elected representatives. Upon receiving approval from LCAR, the final rule is ready for adoption. The Division will support the entirety of this phase. GMNF leadership may wish to participate in LCAR, depending on the comments received and level of legislative interest. The final rule filing process can take up to 45 days.

Final Rule Adoption

In this phase, the administrative tasks of finalizing the rule amendment are completed, including the identification of an effective date. The Division will bear responsibility for this part of the process. Final adoption must take place within a set period following LCAR adoption.

6. Next Steps

The purpose of this document is communicate to stakeholders the intent of the reclassification proposal, the regulatory implications of reclassification, and the envisioned process. Contact

Neil Kamman, Manager of the WSMD Monitoring, Assessment and Planning Program will serve as the State's primary point of contact for this proposed activity.

Neil C. Kamman, Program Manager
1 National Life Dr., Main 2
Montpelier, VT 05620-3522
802 490-6137 / Neil.kamman@state.vt.us
www.watershedmanagement.vt.gov

For information regarding the specific waterbodies proposed, interested parties are encouraged to contact the Division's basin planners of jurisdiction.

All waters west of the Green Mountain Divide: Ethan Swift – Watershed Coordinator. 802-786-2503 or 802-490-6141 ethan.swift@vermont.gov.

West, Williams, Saxtons, and Deerfield Rivers: Marie Levesque Caduto - Watershed Coordinator 802-885-8958, or 802-490-6142.
marie.caduto@vermont.gov

White River: Danielle Owczarski – Watershed Coordinator 802-490-6176.
danielle.owczarski@vermont.gov.

Appendix A. Atlas of surface waters proposed for reclassification

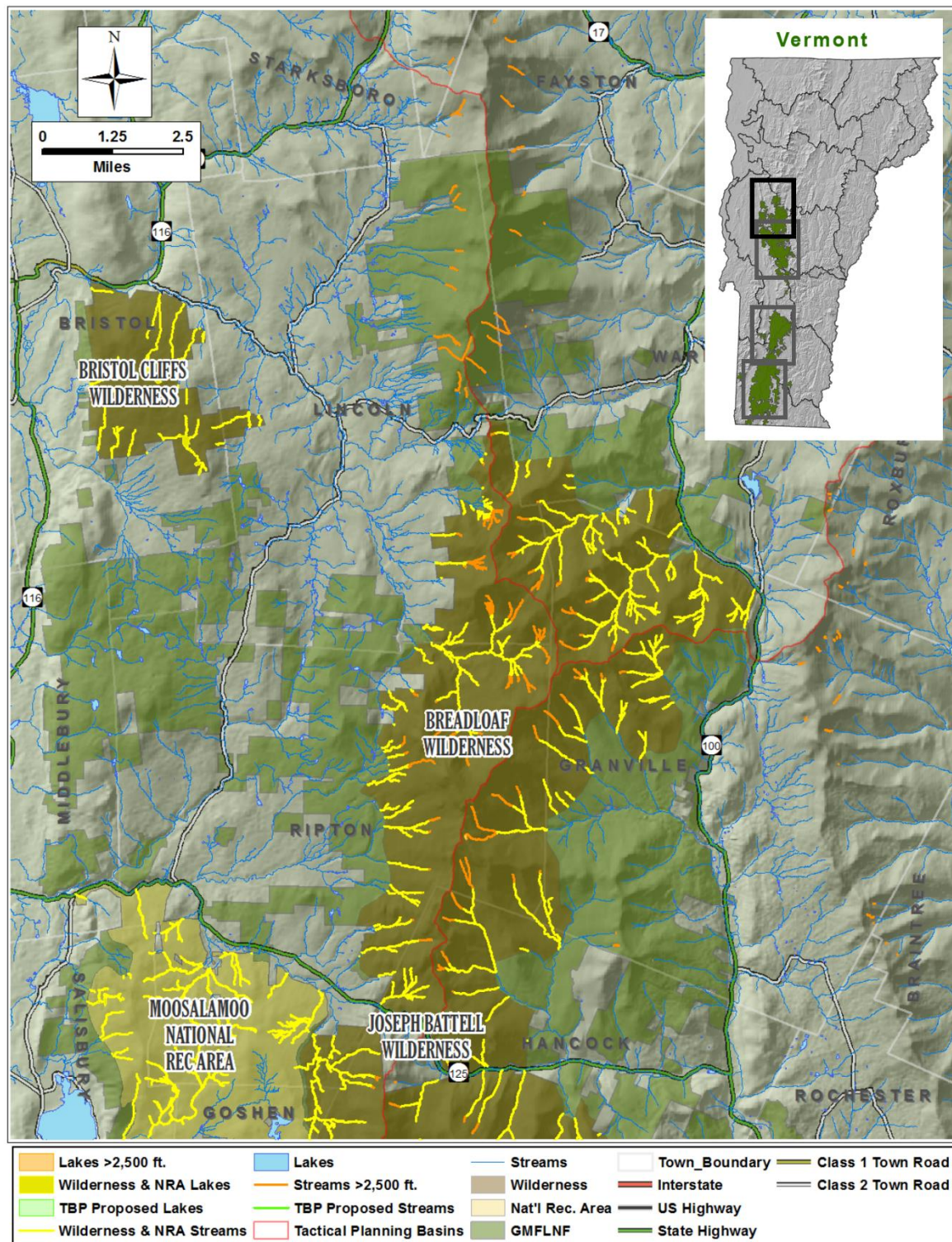


Figure A. 1. Surface waters proposed for reclassification to Class A(1) in the Green Mountain National Forest – Breadloaf.

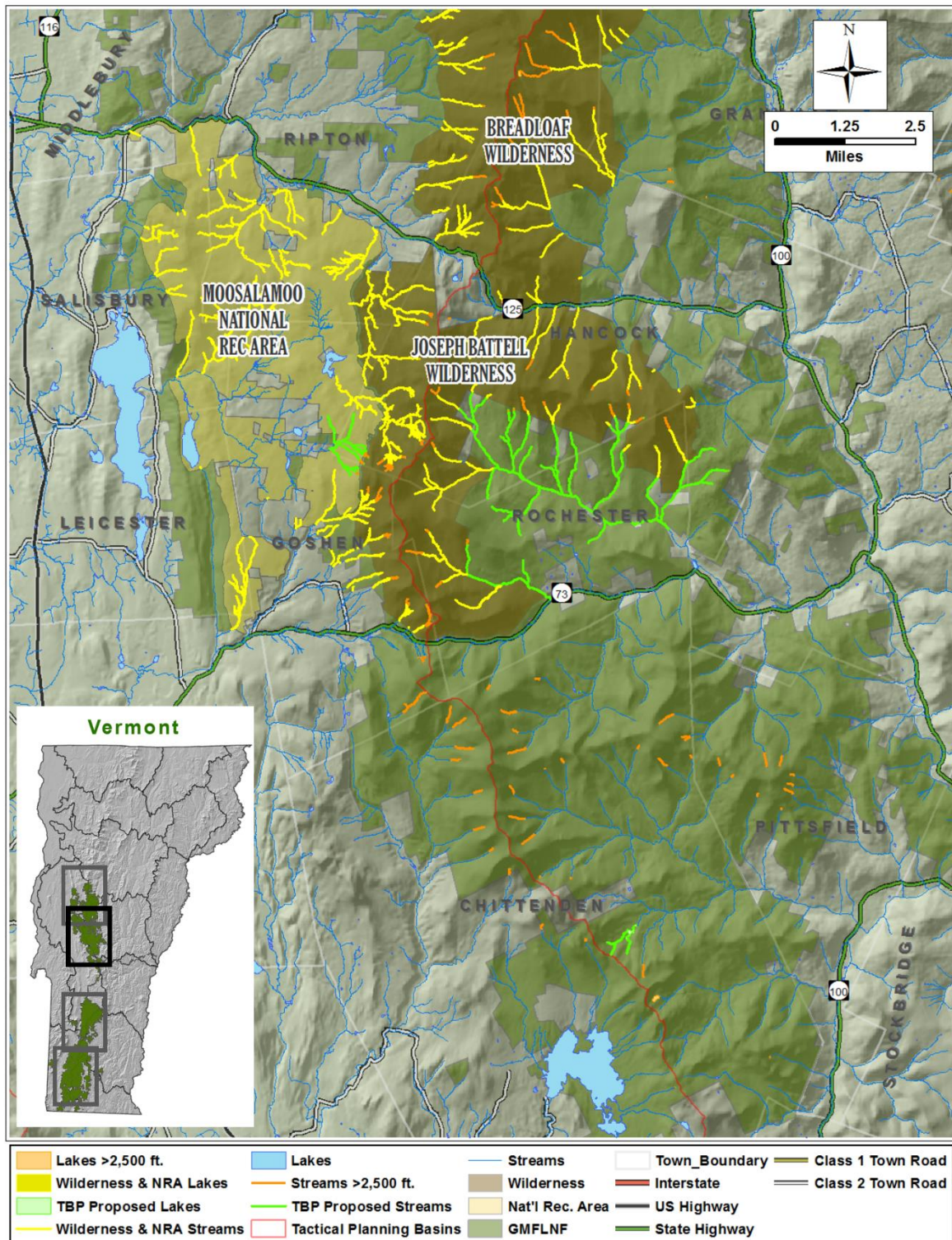


Figure A.2. Surface waters proposed for reclassification to Class A(1) in the Green Mountain National Forest, Moosalamoo and Battell.

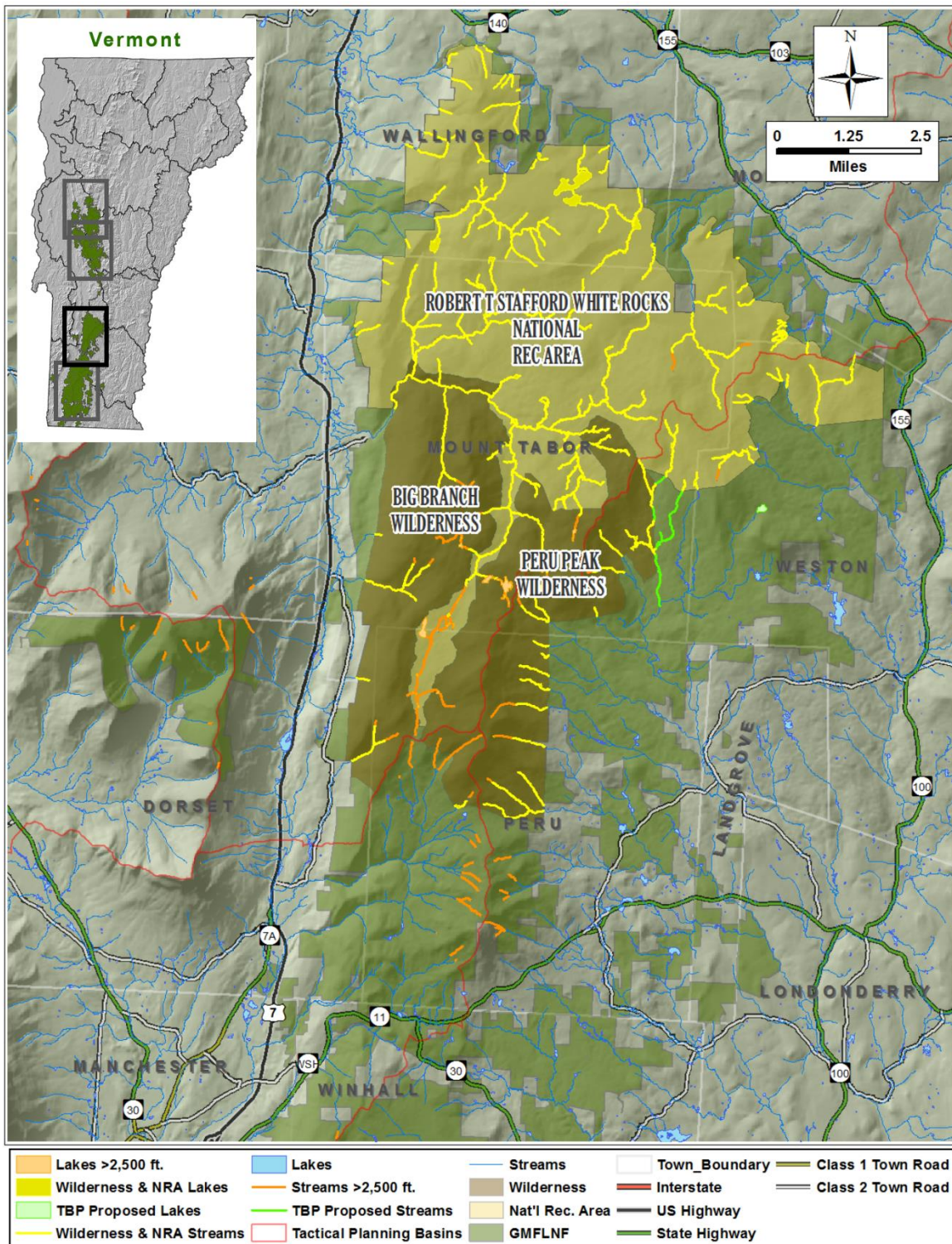


Figure A.3. Surface waters proposed for reclassification to Class A(1) in the Green Mountain National Forest – White Rocks/Big Branch/Peru..

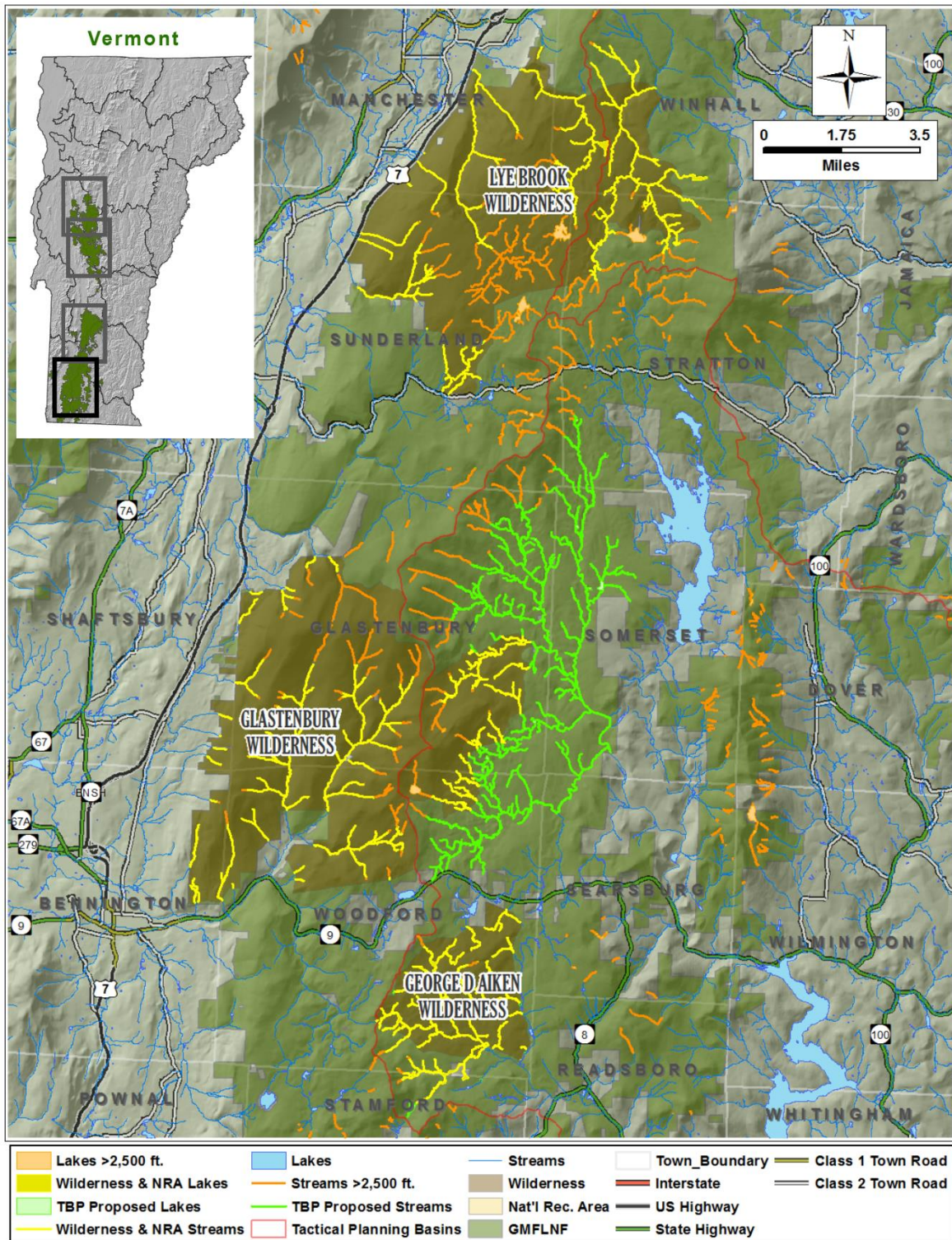


Figure A.4. Surface waters proposed for reclassification to Class A(1) in the Green Mountain National Forest – Lye Brook and Glastenbury.